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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,188	05/14/2001	Raymond Jeffrey May	KCC-14,829	8199

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EXAMINER

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ART UNIT PAPER NUMBER

1771

DATE MAILED: 05/16/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

AS-6

Office Action Summary

Application N .

09/855,188

Applicant(s)

MAY ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 22-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 50-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21 and 50-59, drawn to an elastic laminate material, classified in class 442, subclass 183.
 - II. Claims 22-49, drawn to a method of making, classified in class 156, subclass 161.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by using pre-stretched filaments and adhering them to a facing material or the product can be made without applying tension to the filaments prior to bonding them to the facing material.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Melanie Rauch on May 8, 2003 a provisional election was made with traverse to prosecute the invention of group I, claims 1-21 and 50-59. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22-49 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7, 13-15, 18, 20-21 and 50-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over MELBYE et al. (WO 95/34264) in view of CEDERBLAD et al. (US 5,885,686).

MELBYE et al. discloses an elastic material comprising a plurality of extruded continuous elastomeric strands, which are bonded to a facing layer. The strands may be either placed in greater quantity in certain regions and/or thicker and thinner strands may be employed, in order to produce an elastic material having different zones of elasticity [which will equate to the present tension zones]. (See page 4, line 21 – page 5, line 3). The reference further teaches that the first sheet of flexible material [the facing layer], could be a polymeric film, or a sheet of woven natural or polymeric fibers, or nonwoven natural or polymeric fibers that are bonded internally of the sheet, and also teaches that the elastomeric strands could be of thermoplastic material such as elastomeric polyester, polyurethane and polystyrene-polyisoprene-polystyrene.

(Refer to page 2, lines 9-18). The reference also teaches the use of a second facing material (32).

(Refer to Figure 6)

MELBYE et al. teaches the use of the elastic sheet-like composite in a disposable garment. (Refer to page 7, lines 6-10)

However, the reference does not expressly disclose that the different zones of elasticity include first filaments of a first elastomeric polymer and the second filaments of a second elastomeric polymer.

CEDERBLAD et al. discloses an extruded bicomponent elastomeric netting having bi-directional elasticity. The reference teaches that the elastomeric netting comprises one set of extruded strands in one direction consisting essentially of a first elastic resin component and another set of transverse extruded strands consisting essentially of a second elastic resin component. The strands compositions of both sets of strands could be the same, could be of different components or could be a blend of resins. (Refer to claims 1-8) While the CEDERBLAD et al. reference is directed to provide the material with different elastomeric properties in different directions, it is noted that the reference teachings of using different materials for the first and second strands in order to produce the different elastomeric properties is pertinent to the present invention and will provide the MELBYE et al. reference with an alternate embodiment that would provide the elastic material with different zones of elasticity by using two different elastomeric strands instead of producing this areas by increasing the quantity of strands in certain regions or using thicker and thinner strands.

With regards to claims 5 and 7, CEDERBLAD et al. further teaches the use of polyethylene as a processing aid resin in the polymer compositions. (Refer to claim 11) With regards to claim 14, MELBYE teaches that the zones of different basis weight can be next to

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each other, therefore, it would have been obvious to one of ordinary skill in the art to have likewise place the different elastomeric fibers in zones in which they were side-by-side and not overlapping.

Since both MELBYE et al. and CEDERBLAD et al. are from the same field of endeavor, elastomeric filaments, the purpose disclosed by CEDERBLAD et al. would have been recognized in the pertinent art of MELBYE et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the elastomeric material and provide it with first and second strands of different compositions with the motivation of providing the material with different elastomeric properties in different directions as disclosed by CEDERBLAD et al. (Column 1, lines 24-25).

8. Claims 8-12, 16-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over MELBYE et al. and CEDERBLAD et al. as applied to claims 1-7, 15, 18, 21 and 50-59 above, and further in view of MLEZIVA et al. (US 6,057,024).

MELBYE et al. and CEDERBLAD et al. differ from the claimed invention because they do not disclose the relation of the elastic tension between the low tension zone and the high tension zone, they do not disclose employing an elastomeric adhesive to bond the facing layer and the filaments, and do not disclose using a spunbond material or a meltblown continuous filament composite web for the facing material.

MLEZIVA et al. teaches a composite elastic material that includes an elastic fibrous web 12 and a first extensible layer 24 and a second extensible layer 28. The extensible layers may be formed by extrusion processes such as, for example, meltblowing processes, spunbonding processes or film extrusion processes. (Column 7, lines 3-44) The reference teaches that the

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bonding between the extensible layer and the elastic fibrous web 12 can be continuous using adhesive bonding techniques. (Column 9, lines 58-62) Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have adhesively bonded the fibers to the facing layers because MLEZIVA et al. teaches that this was an alternative method to extruding the strand onto the facing and layer and autogeneously bonding the layers and the strands.

With regards to the relation of the elastic tension between the low tension zone and the high tension zone claimed on claims 8-12, since CEDERBLAD et al. teaches that it is known to use different elastomeric materials to provide different elastomeric properties in an elastomeric material, these variables are result effective variables. Therefore, it would have been obvious to have optimized the elastomeric material by providing it with first and second strands of specific polymeric materials in order to form a fabric having the desired elastic tension through the process of routine experimentation.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-7, 13-21 and 50-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 15, 18, 19, 21, 22 and 49 of copending Application No. 09/855,189 in view of CEDERBLAD et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application no. 09/855,189 teaches having a low tension zone including a plurality of elastomeric first filaments and a high tension zone including a plurality of elastomeric second filaments, and a first facing layer. However, the '189 application claims the tension zones in terms of basis weight and the present application claims it in term of different elastomeric polymers.

CEDERBLAD et al. discloses an extruded bicomponent elastomeric netting having bi-directional elasticity. The reference teaches that the elastomeric netting comprises one set of extruded strands in one direction consisting essentially of a first elastic resin component and another set of transverse extruded strands consisting essentially of a second elastic resin component. The strands compositions of both sets of strands could be the same, could be of different components or could be a blend of resins. (Refer to claims 1-8)

While the CEDERBLAD et al. reference is directed to provide the material with different elastomeric properties in different directions, it is noted that the reference teachings of using different materials for the first and second strands in order to produce the different elastomeric properties is pertinent to the present invention and will provide the ~~09/855,188~~ reference with an alternate embodiment that would provide the elastic material with different zones of elasticity by using two different elastomeric strands instead of producing this areas by increasing the quantity of strands in certain regions or using thicker and thinner strands. E.C

With regards to claims 5 and 7, CEDERBLAD et al. further teaches the use of polyethylene as a processing aid resin in the polymer compositions. (Refer to claim 11)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the elastomeric material and provide it with first and second strands of different compositions with the motivation of providing the material with different elastomeric properties in different directions as disclosed by CEDERBLAD et al. (Column 1, lines 24-25). Further, it would have been obvious to one ordinary skill in the art to use different polymeric materials in order to provide with regions of different basis weight since the basis weigh is dependent on the molecular weight of a material. For example, two filaments of same diameter and length made of different elastomeric polymers will have different basis weight due to their molecular weigh.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1, 2 and 21 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9 and 10 of copending Application No. 09/855,195. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because the present application claims a disposable garment that comprises a targeted elastic laminate material with all the limitations found in claim 9 of the copending application. The present invention does not require a chassis defining a waist opening and two leg openings, but that structure would have been obvious to one of ordinary skill in the art of disposable garments.


This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 8:30-4:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

nlt
May 14, 2003


ELIZABETH M. COLE
PRIMARY EXAMINER